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Rule not given retroactive effect. Harrison v. State, 394 S.W. 2d 713 (Supreme Court of Tennessee).
(December, p. 52)

Prosecutor's questioning of defendant in a non-jury trial concerning prior "conviction" which had been reversed on appeal required granting of mistrial notwithstanding prosecutor's good faith and Judge's statement that he would disregard the question. People v. Cammarara, N.Y.L.J. 3/26/65 (Appellate Term, First Dep't).
(April p. 23)

PRIOR SIMILAR OFFENSES

Testimony as to previous knifing of witness held too remote and prejudicial. Hernandez v. People, 396 P. 2d 952 (Supreme Court of Colorado).
(January, p. 26)

Testimony of shooting of one other than deceased is admissible in homicide prosecution where such testimony tends to establish motive and intent. Pictures of deceased tending to refute defense of self-defense held admissible. Jury examination of revolver similar to murder weapon held permissible. Evidence of flight from scene of crime held admissible. State v. Aubuchon, 394 S.W. 2d 327 (Supreme Court of Missouri).
(December, p. 45)

Where appellant is charged with manslaughter by automobile it was reversible error for trial court to permit testimony of reckless driving three hours prior to accident. Where error is preserved at trial, it is unnecessary to raise point again in motion for new trial. Nash v. State, 178 So. 2d 867 (Supreme Court of Mississippi).
(December, p. 45)

Where defendant, on trial for abortion, attempts to show that he does not possess the necessary skill to perform same, evidence of prior similar offense to rebut defendant's testimony is admissible. Commonwealth v. Kulik, 208 A. 2d 287 (Superior Court of Pennsylvania).
(May, p. 28)

Where defendant was charged with forgery and interposed an alibi defense, testimony by co-conspirator (state's witness) that the defendant had told him about other forgeries was properly admitted as a conversation which occurred at a time when the defendant claimed he was not present. Testimony was admissible despite the fact that it tended to show the commission of other similar crimes. Failure of trial court to instruct jury as to limited effect to be given to such testimony not error where counsel neither objected nor requested instructions. People v. Nawrocki, 136 N.W. 2d 922 (Supreme Court of Michigan).
(November, p. 49)

Court's failure to declare mistrial, following testimony of government agent as to prior narcotics activity of defendant who was relying on defense of entrapment, held reversible error. United States v. Clarke and Johnson, 343 F. 2d 90 (3rd Cir.).
(April, p. 29)

SUFFICIENCY

Defendants, who neither act affirmatively nor acquiesce in the use of the property by drug addicts may not be convicted of "maintaining a place where any narcotic drug is unlawfully used." People v. Campbell, 256 N. Y. S. 2d 467 (New York City Criminal Court).
(April, p. 23)

EXTRADITION

South Carolina prison escapee may not collaterally attack validity

of underlying South Carolina conviction in New York State extradition proceeding. In re Hollaway, 46 Misc. 2d 773 (Supreme Court, New York County).
(April, p. 23)

FAILURE TO OBJECT

See Waiver

FAIR TRIAL

See also Post-Conviction Remedies

PRE-ARREST DELAY

Seven month delay between sale of narcotics and swearing of complaint where defendant was available during entire period and where government's case rested on the uncorroborated testimony of undercover policeman held a violation of due process. Ross v. U. S., 349 F. 2d 210 (C.A.D.C.).
(July-August, p. 39)

PRE-TRIAL PUBLICITY

Defendant entitled to post-conviction relief where impartial disposition of case is rendered impossible due to re-enactment of crime on television People v. Sepos, 16 N.Y. 2d 662 (New York Court of Appeals).
(June, p. 21)

Fourth Department grants change of venue in Rochester murder case where films depicting defendant's re-enactment of the crime were shown on local TV. People v. Luedecke, 22 A.D. 2d 636 (Appellate Division, Fourth Department).
(May, p. 20)

Juror's reading of newspaper article revealing defendant's past criminal record constitutes reversible error. Quintana v. People, 405 P. 2d 740 (Supreme Court of Colorado).
(November, p. 50)

Release and publication, prior to trial, of trial court's decision denying defendant's motion to suppress in which it made detailed findings on sharply drawn factual issues entitles defendant to a change of trial venue. People v. Marturano, 24 A. D. 2d 733 (Appellate Division, Fourth Dept.).
(December, p. 47)

FAMILY COURT

Family Court is without jurisdiction over person residing outside state. Parrett v. Parrett, 260 N.Y.S. 2d 382 (Family Court, Dutchess County).

Family Court refuses to accept jurisdiction in assault case involving unmarried male and female living in meretricious relationship. Best v. Macklin, 260 N.Y.S. 2d 219 (Dutchess County Family Court).
(July-August, p. 53)

USE OF PHOTOGRAPHS SHOWING DEFENDANT'S RE-ENACTMENT OF CRIME

Photographs showing defendant's re-enactment of homicide held admissible in Florida murder case. Grant v. State, 171 So. 2d 361 (Florida Supreme Court).
(April, p. 32)

FEDERAL HABEAS CORPUS

See Post Conviction Remedies

FELONY MURDER

Conspiracy to possess a narcotic drug not a felony inherently dangerous to human life. Its use, therefore, as a predicate for second degree felony murder charge was improper. People v. Williams, 406 P. 2d 647 (Supreme Court of California).
(December, p. 47)

Crime of grand theft not contemplated within felony-murder doctrine. Defense counsel does not have the right to exclude lesser included offense of manslaughter from jury's consideration where the evidence would justify such a finding. People v. Phillips, 42 Cal. Rptr. 868 (Cal. Dist. Ct. of Appeals)
(April, p. 33)

Felony-murder doctrine applicable where killing occurs within *res gestae* of underlying felony. Payne v. State, 406 P. 2d 922 (Supreme Court of Nevada).
(December, p. 49)

Felony-murder doctrine inapplicable where one of the felons is not the actual killer. Commonwealth v. Balliro, 209 N. E. 308 (Supreme Judicial Court of Massachusetts).
(October, p. 53)

Felony-murder doctrine not applicable where victim of robbery kills accomplice. People v. Washington, 402 P. 2d 130 (Supreme Court of California).
(July-August, p. 43)

Patron's death due to fright during tavern robbery held valid predicate for felony murder indictment. State v. McKeiver, 213 A. 2d 320 (Superior Court of New Jersey).
(December, p. 47)

Under the California felony murder statute, a defendant can be convicted of felony murder when, in the course of a robbery, his accomplice was killed by the victim. People v. Washington, 40 Cal. Rptr. 791 (California District Court of Appeals).
(January, p. 28)

When specific intent to commit felony of mayhem is presumed from nature of the assault, the Court may not permit transfer of "presumed" intent for purpose of establishing felony-murder. Husband who enters home with intent to feloniously assault wife is guilty of burglary. People v. Sears, 401 P. 2d 938 (Supreme Court of California).
(July-August, p. 43)

FINGERPRINTS

RETURN AFTER ACQUITTAL

Fingerprints taken pursuant to intoxicated driving charge held returnable after plea of guilty to driving while impaired, Matter of Johansen v. Barry, 253 N. Y. S. 2d 830, (Suffolk County Supreme Court).
(January, p. 30)

GRAND JURY PROCEEDINGS

IMMUNITY

See Privilege Against Self-Incrimination

GUILTY PLEA

See Plea of Guilty

HABEAS CORPUS

See Post Conviction Remedies

HARMLESS ERROR

See Appeals

HOMICIDE

Defendant properly convicted of first degree murder where bullet passes through body of intended victim and kills another. Commonwealth v. Rundle, 211 A. 2d 460 (Supreme Court of Pennsylvania).
(September, p. 38)

Wisconsin Supreme Court reaffirms objective standard of provocation in manslaughter cases. Weston v. State, 135 N.W. 2d 820 (Supreme Court of Wisconsin).
(September, p. 37)

IMMUNITY

See Generally Privilege Against Self-Incrimination

INCRIMINATING STATEMENTS

ACCUSATORY STAGE — DUTY TO WARN

California Supreme Court gives further definition to Escobedo "accusatory stage." Court declines to "presume" that defendant was advised of his rights. People v. Stewart, 400 P. 2d 97 (Supreme Court of California).
(May, p. 28)

Florida Supreme Court rules confession taken in absence of warning as to accused's constitutional rights admissible in evidence. Court rejects broad interpretation of *Escobedo v. Illinois*. Montgomery v. State, 176 So. 2d 331 (Supreme Court of Florida).
(September, p. 34)

Police officer brought to headquarters for questioning as prime suspect in bribery investigation held to be neither under arrest nor entitled to assistance of counsel. Hutcherson v. U. S., 345 F. 2d 964 (C. A. D. C.
(June, p. 27)

Testimony concerning the defendant's admissions that he was a prior felon held admissible in habitual criminal proceedings despite fact that defendant was not warned of his right to remain silent and of his right to counsel. State v. Collins, 394 S.W. 2d 368 (Supreme Court of Missouri).
(December, p. 55)

Third Circuit Court of Appeals holds that suspect has right to consult with counsel at point investigation focuses upon him and that such right does not depend upon a request. U. S. ex rel. Russo and Bisignano v. New Jersey, 351 F. 2d 429 (3rd Cir.).
(June, p. 31)

Third Circuit Court of Appeals denies rehearing in U. S. ex rel. Russo and Bisignano v. New Jersey. 351 F. 2d 440 (3rd Cir.).
(November, p. 34)

Where officer, in questioning defendant at scene of automobile accident, elicits admission that defendant was driving, the admission may be received in evidence. There is no necessity to warn the defendant of his constitutional rights where the officer's purpose is merely to ascertain the cause of the accident. Judgment of conviction for driving without license affirmed. State v. Randolph, 406 P. 2d 791 (Supreme Court of Oregon).
(December, p. 38)

CO-DEFENDANTS
See Co-Defendants

DEFENDANT'S REQUEST TO SEE LAWYER OR FAMILY, LAWYER'S OR FAMILY'S REQUESTS AS BASIS OF EXCLUSION

Incriminating statements made by defendant after retained counsel requests to speak with defendant held inadmissible. People v. Sanchez, 15 N. Y. 2d 387 (New York Court of Appeals).
(May, p. 18)

Misrepresentations by police as to "routine" nature of questioning of defendant excuse counsel's failure to request interview with defendant. Statements made by defendant after mere notification to police that counsel had been retained held inadmissible. People v. Ressler, 24 A. D. 2d 7 (Appellate Division, Third Dept.).
(September, p. 40)

CONFESSIONS — ADMISSIBILITY

New York Court of Appeals excludes statements taken from defendant, by police, after counsel contacted police officer in charge and stated he "didn't want any statements taken from (him)." Court rejects *Dorado* rule. People v. Gunner, 15 N. Y. 2d 226 (New York Court of Appeals).
(March, p. 15)

Pre-arraignment statements taken in absence of counsel who had been retained and who had instructed the defendant to remain silent held admissible. People v. Baker, N.Y.L.J. 4/7/65 (Supreme Court, New York County).
(May, p. 21)

Refusal of police to permit defendant's father to see him does not by itself render subsequent confession inadmissible. It is, however, a factor to be considered on issue of voluntariness. People v. Taylor, 16 N. Y. 2d 1038 (New York Court of Appeals).
(December, p. 38)

Refusal of police to permit father to speak with defendant in custody held to be only one factor in determining voluntariness. People v. Hocking, 15 N. Y. 2d 973 (New York Court of Appeals.)
(May, p. 18)

Where parents and attorney of sixteen-year old murder suspect requested and were denied permission to see the defendant, his subsequent confession was nevertheless held admissible. Police concededly violated statute in not taking child

directly before the juvenile court which was open and nearby. State v. Carder, 210 N. E. 2d 714 (Court of Appeals of Ohio).
(December, p. 38)

Where retained counsel, after station house visit with client who had just been taken into custody, requested that police proceed to formal arrest and arraignment, statements given by client as a result of subsequent police interrogation held inadmissible. People v. Friedlander, 16 N. Y. 2d 248 (New York Court of Appeals).
(December, p. 57)

EXCLUDIBILITY — DELAY IN ARRAIGNMENT

Defendant's admissions made after arraignment in Federal Court, but prior to State Court arrignment on related charge, held admissible in State prosecution. People v. Stanley, 15 N. Y. 2d 30 (New York Court of Appeals).
(January, p. 32)

Five minutes held to be unreasonable delay in arraignment. Confession obtained during that period excluded under McNabb-Mallory rule. Alston v. U. S., 348 F. 2d 72 (C.A.D.C.).
(June, p. 29)

Statements and handwriting samples elicited from defendant a short time after arrest and at a point when investigatory process had reached accusatory stage excluded under McNabb-Mallory rule. U. S. v. Middleton, 344 F. 2d 78 (2nd Cir.).
(May, p. 23)

Supreme Court of Delaware adopts *McNabb-Mallory* rule. Excludes admission made after unreasonable delay in arraignment in violation of state law. Vorhauer v. State, 212 A. 2d 886 (Supreme Court of Delaware).
(November, p. 45)

EXHORTATION TO "TELL THE TRUTH" NOT COERCION

Mere exhortation to "tell the truth" does not render confession inadmissible. Burke v. Warden, Maryland Penitentiary, 211 A. 2d 758 (Court of Appeals of Maryland).
(September, p. 33)

FAILURE TO ESTABLISH CORPUS DELICTI

Confession improperly admitted in evidence where state fails to establish corpus deliciti of larceny without resort to confession. Hodges v. State, 176 So. 2d 91 (Supreme Court of Florida).

VOLUNTARINESS OF CONFESSION

Confession held voluntary after ten hours of questioning over three-day period while defendant was in custody on vagrancy charge. Hutto v. State, 178 So. 2d 810 (Supreme Court of Alabama).
(December, p. 36)

GIVEN AFTER 12 HOURS OF INTERROGATION

Murder confession held voluntary after twelve hours of pre-arraignment questioning. People v. Leonti, N.Y.L.J. 3/25/65 (Supreme Court, Nassau County).
(April, p. 22)

HEARING AS TO VOLUNTARINESS NECESSITY

Court orders preliminary hearing to determine whether confession was used at trial and whether voluntariness was contested. Trial minutes not available. People v. Dibbin, 46 Misc. 2d 1018 (Supreme Court, Queens County).
(June, p. 24)

Defendant, for purposes of Huntley hearing (People v. Huntley, 15 N. Y. 2d 72), permitted to examine witness who resides out of the state by commission. People v. Augello, 45 Misc. 2d 402 (Supreme Court, Erie County).
(May, p. 19)

Fourth Circuit Court of Appeals lays down procedural rules for offering confessions and admissions into evidence. United States v. Inman, 352 F. 2d 954, (4th Cir.).
(December, p. 26)

"Huntley" hearing on issue of voluntariness of confession denied where, although the trial court had charged as to voluntariness, the issue was not actually in the case. People v. Rizzi, 47 Misc. 2d 948 (Supreme Court, New York County). *(May, p. 19)*

Where the defendant's incriminating statement was introduced in evidence to impeach his credibility and where the statement was concededly a voluntary one, there was no necessity to remand for a hearing outside the presence of the jury on the issue of voluntariness. Conviction affirmed. State v. Lopez, 406 P. 2d 941 (Supreme Court of Washington).
(December, p. 36)

MADE TO CELLMATE AFTER ARRAIGNMENT

Defendant's post-arrest incriminating remarks made to confederate in jail cell held admissible at trial where they were not the result of any government act of trickery or deceit. Stowers v. U. S., 351 F. 2d 301 (9th Cir.).
(November, p 33)

MENTALLY ILL DEFENDANT

" . . [I]n the absence of an adjudication of insanity or incompetency, and in the absence of any action by the state or its officers which could be said to make a confession involuntary, a confession by a mentally ill defendant should be admissible, with the defendant at liberty to introduce evidence of any circumstances that might affect its voluntariness or its probative value." State v. Allen, 406 P. 2d 950 (Supreme Court of Washington).
(December, p. 36)

OBTAINED THROUGH MISREPRESENTATION

Representation by detective that defendant would not be charged with homicide but would merely be used as a witness does not require exclusion of his subsequent voluntary inculpatory statement from trial on accessory charge. People v. Caserino, 16 N. Y. 2d 255 (New York Court of Appeals).
(December, p. 38)

TESTIMONIAL ADMISSION AT TRIAL AS BAR TO RAISING VOLUNTARINESS OF PRE-TRIAL STATEMENT

Defendant's statement that "he had thrown gun away" made to arresting officer moments after arrest and after defendant had been shot were held admissible as part of the *res gestae*. State v. Ellis, 136 N.W. 2d 384 (Supreme Court of Minnesota).
(October, p. 48)

Defendant's testimonial admissions of guilt at trial do not bar post conviction collateral attack on evidence allegedly obtained in violation of his federal constitutional rights. White v. Peppersack, 352 F. 2d 470 (4th Cir.).
(December, p. 26)

Doctrine of collateral estoppel bars government's attempt to relitigate issue adversely determined against it in prior trial of same defendant on another charge. Laughlin v. United States, Forte v. United States, 344 F. 2d 187 (C.A.D.C.).
(March, p. 22)

Police coercion of witness' pretrial statement held not to render identical testimony inadmissible. People v. Portelli, 16 N. Y. 2d 537 (New York Court of Appeals).

Spontaneous confession given before defendant is advised of his rights and subsequent "confirmatory" confessions held admissible. People v. Ladetto, 207 N.E. 2d 36 (Supreme Judicial Court of Massachusetts).
(July-August, p. 47)

Taking statement from wounded defendant shortly after arrest does not violate defendant's right to counsel. Commonwealth v. Tracy, 207 N.E. 2d 16 (Supreme Judicial Court of Massachusetts).
(July-August, p. 47)

Where defendant testifies at the trial to the same facts as those contained in his confession he waives any claim of involuntariness. Bell v. People, 406 P. 2d 681 (Supreme Court of Colorado).
(December, p. 38)

SILENCE AS AN ADMISSION
See Privilege Against Self-Incrimination

UNSIGNED CONFESSION
Detective's written statement of his conversation with the defendant may not be introduced in evidence where defendant has neither signed nor acknowledged the truth of the statement. People v. Duffy, Appellate Division, Second Dept. (N. Y. L. J., March 31, 1965).
(April, p. 23)

SUBMISSION OF EXHIBITS NOT IN EVIDENCE TO JURY
Grand jury testimony of state's witness which was neither offered nor received in evidence was improperly given to the jury as an exhibit. Testimony contained references to other crimes allegedly committed by the defendant which testimony was inadmissible at trial. Conviction reversed. Osborne v. U. S., 351 F. 2d 111 (8th Cir.).
(October, p. 45)

WITNESSES
See Witnesses

VOLUNTARILY GIVEN TO AUTHORITIES AT INTERVIEW REQUESTED BY DEFENDANT
Confession held admissible where, after arraignment, defendant already represented by counsel seeks personal interview with authorities. No duty on part of prosecutor to advise defendant's counsel of proposed meeting. State v. Arrington, 207 N.E. 2d 557 (Supreme Court of Ohio).
(July-August, p. 48)

Post-arraignment, pre-indictment voluntary confession made by incarcerated unrepresented defendant to police officers with whom defendant requested interview held admissible. Cephus v. U. S., 352 F. 2d 663 (C.A.D.C.).
(July-August, p. 35)

INDICTMENTS AND INFORMATION

FORM
Court of Appeals upholds validity of short form, second degree murder indictment which fails to name victim. People v. Langford, 16 N. Y. 2d 32 (New York Court of Appeals).
(July-August, p. 44)

Court upholds joinder of unlicensed operator and drunken driving charges occurring one week apart. Court also holds best evidence rule not applicable where issue is whether license has been revoked. Marcum v. Commonwealth, 390 S.W. 2d 884 (Court of Appeals of Kentucky).
(July-August, p. 45)

State may allege alternative theories of killing in single count. Defendant's confession obtained on his being taken back to scene of crime several days after he was taken into custody held admissible. Boulden v. State, 179 So. 2d 20 (Supreme Court of Alabama.)
(December, p. 49)

DISMISSAL
Consent of District Attorney required in order to dismiss indictment of mental incompetent. Matter of Negro v. Dickens, 22 A. D. 2d 406 (Appellate Division, First Dept.).
(March, p. 30)

Judge of Criminal Court has power to "D. O. R." People v. Miguel "Doe," 44 Misc. 2d 970 (Criminal Court of the City of New York, Queens County).
(March, p. 27)

SUFFICIENCY
Absence of the specific address wherein the burglary took place is a defect for which indictment may be quashed. However, defect is not jurisdictional, and failure to move

in the trial court constitutes a waiver. People v. Powell, 209 N. E. 2d 345 (Appellate Court of Illinois).
(October, p. 54)

Failure to include name of purchaser in information charging felonious sale of liquor held a jurisdictional defect not waived by plea of guilty. Court also holds defendant should be given opportunity to examine and explain pre-sentence investigation report. State v. Grady, 404 P. 2d 347 (Supreme Court of Idaho).
(October, p. 54)

Indictment charging obscenity must set forth specific words alleged to have been spoken. Prosecutor may not question defendant concerning similar but unrelated obscene phone calls. Spears v. State, 175 So. 2d 158 (Supreme Court of Mississippi).
(July-August, p. 44)

(a) Indictment under Ohio Habitual Criminal Act (Sec. 2961.11 Revised Code) which merely alleges that defendant "pleaded guilty" to three prior offenses is defective as failing to allege prior *convictions.* (b) Indictment which fails to allege convictions of specific crimes enumerated in the act is defective. (c) Prior armed robbery conviction not within scope of habitual criminal act. (d) Prior offenses must have been separately prosecuted and tried. State v. Winters, 209 N.E. 2d 131 (Supreme Court of Ohio).
(November, p. 49)

Seventh Circuit, overruling its earlier decision in Lauer v. U. S., 320 F. 2d 187, holds that failure to state name of purchaser in prosecution under 26 U. S. C. 4705(a) for sale of a narcotic drug without written order form does not render indictment defective. Collins v. Markley, 346 F. 2d 230 (7th Cir.).
(June, p. 30)

INDIGENT DEFENDANTS

Generally, See Right To Counsel

ASSIGNED COUNSEL'S RIGHT TO COMPENSATION

Assignments of private attorney to represent indigent defendant not a "taking" of his services under just compensation clause of Fifth Amendment. U. S. v. Dillon, 346 F. 2d 633 (9th Cir.).
(July-August, p 33)

PRISON TERMS FOR INABILITY TO PAY FINES

Sentence of $250 fine or one day imprisonment for each $1.00 of unpaid fine is unconstitutional as applied to indigent defendant who is unable to pay. People v. Collins, 47 Misc. 2d 210 (Orange County Court).
(October, p. 52)

RIGHT TO APPEAL

Application of indigent defendant for leave to appeal in *forma pauperis* must be granted even though trial judge certified that appeal was totally frivolous and defendant had himself stated on the record that he had received a fair trial. U. S. v. Deaton, 349 F. 2d 664 (6th Cir.).
(September, p 25)

RIGHT TO FREE EXPERT WITNESSES

Federal Court refuses to appoint, at Government's expense, independent expert witness to aid indigent defendant in the preparation of his case. United States v. Wentland, 234 F. Supp. 936 (D. C. D. C.).
(January, p. 28)

Where attorney retained a psychiatrist in defendant's behalf but made no effort to secure court authorization in advance of retaining him, an order denying the application for payment of the fees was affirmed. In the matter of the application of Regan v. Howe, 16 N. Y. 2d 1037 (New York Court of Appeals).
(December, p. 36)

RIGHT TO FREE MINUTES

Absent some claim of indigency, defendant, appealing a speeding con-

viction in Justice's Court, is not entitled to a free copy of the transcribed stenographic trial minutes as part of the return. People v. Freeman, 255 N. Y. S. 2d 563 (Seneca County Court).
(March, p. 29)

New Jersey state statute requiring state prisoner to reimburse county treasurer out of prison earnings for cost of transcript furnished in connection with unsuccesful appeal of his conviction does not violate prisoner's federal constitutional rights. Rinaldi v. Yeager, 238 F. Supp. 960 (D.C.N.J.).
(May, p. 25)

Refusal to furnish indigent defendant with transcript of first trial which ended in hung jury requires reversal of conviction after second trial. Peterson v. U. S. 351 F. 2d 606 (9th Cir.).
(November, p. 33)

Transcript of minutes of first trial must be furnished to defendant on retrial of homicide case. State ex rel. Marshall v. Eighth Judicial District Court In and for Clark County, 396 P. 2d 680 (Nevada Supreme Court).
(January, p. 29)

INFERENCES AND PRESUMPTIONS

Constructive, nonexclusive possession of stolen goods sufficient to invoke presumption of guilty knowledge in federal "possession of stolen goods" prosecution. U. S. v. Casalinuovo, 350 F. 2d 207 (2nd Cir.).
(September, p 27)

Inference and presumption distinguished. People v. Papanier, People v. Sorgaard, 15 N. Y. 2d 554 (New York Court of Appeals).
(January, p. 25)

Inference of guilt from unexplained presence at illegal still held constitutional. United States v. Gainey, 380 U.S. 63.
(March, p. 23)

In prosecution for interstate transportation of stolen car, evidence that defendant had been seen sitting in right-hand front seat of stolen car while it was standing still plus fact that his fingerprints had been found on wing window of right front door insufficient to sustain finding that he was in possession of car so as to sustain inferences that he knew vehicle was stolen and that he had transported it in interstate commerce. Allison v. U. S., 348 F. 2d 152 (10th Cir.).
(July-August, p. 40)

Statutory inference authorizing trier of fact to find defendant guilty of possessing an illegal still from proof of his presence at site held constitutionally impermissible. United States v. Romano et al., 382 U. S. 136.
(December, p. 23)

INFORMANT

DUTY TO DISCLOSE

Prosecutor's refusal to disclose informant's address and phone number requires granting of motion to suppress. United States v. Goss, 237 F. Supp. 236 (U.S.D.C.).
(March, p. 29)

INSANITY

See Also Federal Habeas Corpus—Grounds—Insanity

OPINION TESTIMONY OF LAY WITNESSES

. . Where defendant introduces sufficient evidence to raise issue of insanity, government may, as a matter of law, satisfy its burden of establishing defendant's sanity beyond a reasonable doubt, solely through testimony of lay witnesses. Brown v. U.S., 351 F. 2d 473 (5th Cir.).
(November, p. 33)

Where lay witnesses testify to defendant's sane appearance and where defendant's actions indicate that he knows that he has done "wrong," appellate court will not upset jury verdict of guilty despite fact that 3 members of lunacy

commission testified at trial that defendant was legally insane. Defense of insanity presents question of fact to be determined by the jury based upon all of the relevant evidence. Opinion of sanity experts are therefore not conclusive. State v. Whisenant, 175 So. 2d 293 (Supreme Court of Louisiana).
(July-August, p. 45)

PLEA OF INSANITY

Trial judge has the power to interpose, *sua sponte*, a defense of insanity over defendant's objection. Cross v. United States, 354 F. 2d 512 (C.A.D.C.)
(December, p. 28)

STANDARDS OF CRIMINAL RESPONSIBILITY

McNaghten charge fails to satisfy qualified Durham rule; Confession made by defendant to court appointed state psychiatrist during course of court ordered mental examination held inadmissible. State v. Hathaway, 211 A. 2d 558 (Supreme Judicial Court of Maine).
(September, p. 35)

Supreme Court of Arizona declines to alter McNaghten test of criminal responsibility. Trial court properly permitted state psychiatrist to testify on rebuttal, after defendant submitted psychiatric evidence of insanity, that defendant refused examination by state psychiatrist. State v. Schantz, 403 P. 2d 521 (Supreme Court of Arizona)..
(September, p. 36)

History of drug addiction not evidence of mental disease sufficient to raise issue of criminal responsibility. Heard v. United States, 348 F. 2d 43 (C.A.D.C.).
(January, p. 24)

JOINDER

SEE INDICTMENTS—FORM

JUDICIARY

DISQUALIFICATION

Judge who was an Assistant District Attorney of the county of venue at time of conviction is disqualified to preside at subsequent coram nobis hearing. Parties may not confer jurisdiction by consent. People v. Berry, 259 N.Y.S. 2d 971 (Appellate Division, Fourth Dept.).
(July-August, p. 54)

JURIES

RELIGIOUS REQUIREMENTS

Buddhist's murder conviction reversed. Maryland's constitutional requirement that grand jurors and petit jurors must believe in the existence of God held violation of Fourteenth Amendment. Rule applied prospectively only. Schowgurow v. State, 213 A. 2d 475 (Court of Appeals of Maryland).
(December, p. 51)

SEPARATION DURING DELIBERATION

Sending federal jurors home overnight while they are deliberating a felony case held reversible error. United States v. D'Antonio, 342 F. 2d 667 (7th Cir.)
(March, p. 31)

SPECIAL PANEL

District Attorney seeks special jury in Whitmore case. People v. Whitmore, N.Y.L.J. 2/19/65 (Supreme Court, Kings County).
(March, p. 22)

VOIR DIRE

Failure of federal judge, upon request, to inquire of jury panel, regarding possible predilections concerning police testimony held reversible error, Brown v. United States, 338 F. 2d 543 (C.A.D.C.).
(January, p. 31)

Questioning of jurors as to CORE membership held not improper, People v. Presley, 22 A. D. 2d 151 (Appellate Division, Fourth Department.)
(January, p. 31)

Refusal of trial judge to propound to prospective jurors questions requested by defense counsel relating to crux of defense is prejudicial error. U.S. v. Napoleone, 349 F. 2d 350 (3rd Cir.).
(September, p. 27)

Seventh Circuit rules that although, on the question of jury contamination by prejudicial newspaper publicity, it is better practice to interview each juror singly, out of the presence of all of the other jurors, failure to do so is not prejudicial, especially where proof of defendant's guilt is overwhelming. U.S. v. Largo, 346 F. 2d 253 (7th Cir.).
(June, p. 30)

WAIVER

Defendant in Federal prosecution may not waive trial by jury without consent of court and prosecutor. Singer v. United States, 380 U.S. 24.
(March, p. 29)

JURISDICTION

Burglary charge may be prosecuted despite fact that rape charge arising out of the burglary is pending. The two charges are not "the same offense" within meaning of Indiana statute. (Burns' Ind. Stat. Anno. Secs. 9-908 [1942 Repl.]) proscribing prosecution of offense when another prosecution for same offense is pending.

Objection should be raised by plea in abatement at time of trial. State v. Lake Criminal Court, 209 N.E. 2d 30 (Supreme Court of Indiana).
(November, p. 50)

County Court not required to transfer inter-spousal felonious assault case to Family Court. People v. Johnson, 44 Misc. 2d 1075 (Nassau County Court).
(March, p. 30)

Defendant who commits act in another state amounting to abandonment of children residing in New York may be prosecuted in New York for said abandonment. People v. Hopkins (Supreme Court, Queens County), N.Y.L.J. 4/13/65.
(May, p. 20)

Judge of New York City Criminal Court has inherent power to reverse himself prior to imposition of sentence and to acquit the defendant where he finds on reconsideration that he erred in convicting defendant. Matter of O'Connor v. Weinfeld, 47 Misc. 2d 228 (Supreme Court, Queens County).
(October, p. 55)

Mere fact that magistrate has exclusive jurisdiction in civil proceeding to punish for criminal contempt held not to prohibit criminal contempt prosecution. People v. Fairbairn, 23 A.D. 2d 799 (Appellate Division, Third Dept.).
(December, p. 51)

State must prove that criminal act occurred within county where trial is held. Mounier v. State, 178 So. 2d 714 (Supreme Court of Florida).
(December, p. 51)

JURY CHARGES

ALLEN "DYNAMITE" CHARGES

"Allen" charge which exhorts individual jurors, in minority, to reexamine their views in the light of those in the majority, but which fails to inform them of the "duty of dissent if dissent is founded upon reasoned conclusions reasonably arrived at and reasonably held" is reversible error. United States v. Smith, 353 F. 2d 166 (4th Cir.).
(December, p. 29)

Giving of "Allen Charge" to jury whose foreman asked for replacement of minority jurors with alternates after inquiry by court as to division of jury, requires reversal of subsequent conviction, Williams v. United States, 338 F. 2d 530 (C.A.D.C.).
(January, p 30)

COMMENTING ON CREDIBILITY OF WITNESSES

Jury charge that a drug addict is "inherently a perjurer when his own interests are concerned" held plain error. Godfrey v. United States, 353 F. 2d 456 (C.A.D.C.).
(December, p. 28)

DUTY TO CHARGE LESSER INCLUDED OFFENSE

In the absence of waiver the

trial court must charge lesser included offense. The failure to do so is reversible error. Trial Court probably errs in permitting police officer to testify to admissions of accomplice given after completion of crime which implicate the defendant, where accomplice is not called to witness stand. See *Douglas v. Alabama, 380 U.S. 415.* State v. Jordan, 136 N.W. 2d 601 (Supreme Court of Minnesota).
(November, p. 50)

DUTY TO INSTRUCT ON DEFENDANTS THEORY OF CASE

Where defense, in prosecution for sale of narcotics to an undercover police officer, is mistaken identity, it is reversible error for trial judge to refuse to give specific instruction on identity. D. C. Circuit reaffirms rule that despite trial judge's correct charge that each element of crime must be proved beyond a reasonable doubt, it is reversible error for the Court to refuse, on request, to instruct on defendant's theory of the case. Salley v. United States, 353 F. 2d 897 (C.A.D.C.).
(December, p. 29)

ELEMENTS OF CRIME

Court finds plain error in: (a) admission of co-defendant's statement without limiting instructions, (b) failure to charge clearly on intent and degrees of homicide (c) failure to charge on right to intervene in defense of another. State v. Fair, 211 A. 2d. 359 (Supreme Court of New Jersey).
(September, p. 39)

Defendant's admission at trial that the property alleged to have been stolen was felonious in amount eliminated the issue of value from the case and made a charge as to misdemeanor amount unnecessary. People v. Brady, 16 N.Y. 2d 186 (New York Court of Appeals).
(November, p. 47)

INCONSISTENT DEFENSES

Defense of entrapment available to defendant who denies committing the unlawful acts. People v. Perez, 401 P. 2d 934 (Supreme Court of California).
(July-August, p. 45)

Where defendant's evidence raises claim of both accidental shooting and self-defense, Court must instruct as to both defenses. Specific request to charge on defense of self-defense unnecessary to preserve issue for review. State v. Todd, 142 S.E. 2d 159 (Supreme Court of North Carolina).
(July-August, p. 45)

REASONABLE DOUBT

Charge that jury should convict only if they are "morally convinced" of defendant's guilt held inadequate charge on reasonable doubt and requires reversal of conviction. United States v. Johnson, 343 F. 2d 5 (2nd Cir.).
(April, p. 30)

JURY MISCONDUCT

It was not an abuse of discretion to deny a motion for a new trial based upon counsel's affidavit that certain jurors had told him that they had inspected the scene of the crime. People v. Delucia, 15 N.Y. 2d 294 (New York Court of Appeals).
(April, p. 20)

JURY TRIAL

WAIVER

Defendant may not waive trial by jury without consent of trial judge. State v. Taylor, 391 S.W. 2d 835 (Supreme Court of Missouri).
(September, p. 40)

JUVENILE COURTS

Judge calls for corrective legislation to remedy widespread lack of effective prosecution of juvenile delinquency cases in New York City Family Court. In the Matter of Tom Lang, etc., 44 Misc. 2d 900 (New York City Family Court).
(March, p. 11)

KIDNAPPING

Confinement which is an integral part of robbery held not to constitute a violation of kidnapping

statute. People v. Levy, 15 N.Y. 2d 159 (New York Court of Appeals). *(March, p. 31)*

LARCENY

ATTEMPTS

In prosecution for attempted larceny, People are not required to prove the existence of property capable of being stolen. State v. Meisch, 206 A. 2d 763 (Sup. Ct. of N.J., App. Div.). *(April, p. 31)*

Where evidence shows that defendant believed property to have been abandoned, larceny conviction was reversed. State v. Gage, 136 N.W. 2d 662 (Supreme Court of Minnesota). *(November, p. 50)*

PROOF OF VALUE

Grand larceny conviction reversed where sole proof as to value of property was purchase price two years prior to theft. People v. Liquori, 24 A.D. 2d 456 (Appellate Division, Second Department). *(June, p. 24)*

LIE DETECTOR TESTS

References to a lie detector test in the testimony of State's witness and by the prosecutor in summation did not constitute error. People v. Martin, 210 N.E. 2d 798 (App. Ct., Ill.). *(December, p. 51)*

Showing that witness refused to submit to lie detector test held improper means of impeaching credibility of witness who testified in hearing on a motion for a new trial that it was he and not the defendant who had committed the crime. Abuse of discretion to deny motion for new trial. State v. Sneed, 403 P. 2d 816 (Supreme Court of Arizona). *(September, p. 38)*

MULTIPLE OFFENDERS

SEE ALSO EVIDENCE — PRIOR CONVICTIONS AND PENALTY TRIAL

Mere guilty plea not a conviction within New York multiple felony offender statute. People v. Weinberger, 15 N.Y. 2d 735 (New York Court of Appeals). *(January, p. 31)*

Motion for resentence under New York Penal Law Section 1943 (multiple offender statute) held improper means of attacking prior New York conviction. Petitioner must proceed by way of coram nobis. People v. Esposito, N.Y.L.J. 4/15/65 (Westchester County Court). *(May, p. 20)*

Prior New Jersey conviction for "high misdemeanor" considered a felony for purposes of New York multiple offender statute. People v. Williams, 22 A.D. 2d 805 (Appellate Division, Second Dept.). *(January, p. 38)*

Proper to take testimony relative to second offender status *after* swearing of the jury. State v. Wilwording, 394 S.W. 2d 383 (Supreme Court of Missouri). *(December, p. 53)*

Section 1943 of the Penal Law which enables a New York state prisoner, by a motion for resentence, to challenge the constitutional validity of an out-of-state conviction used to make him a multiple offender held retroactive. People v. Broderick, 24 A.D. 2d 638 (Appellate Division, Second Dept.). *(July-August, p. 54)*

Supreme Court of Arkansas outlines procedure for multiple offender prosecutions. Miller v. State, 394 S.W. 2d 601 (Supreme Court of Arkansas). *(December, p. 52)*

Whether prior conviction is felony or misdemeanor is determined by length of actual sentence imposed rather than by maximum sentence prescribed by statute. State v. Morales, 402 P. 2d 998 (Supreme Court of Arizona). *(July-August, p. 46)*

Where defendant was convicted of illegally possessing barbiturates as a misdemeanor, such conviction was not within multiple narcotic offender

statute. Although sentence of one year in penitentiary was within permissible limits of statute, sentence was vacated and case was remanded to trial by court for resentence. Court may have been improperly influenced by mistaken belief that defendant's conviction was within the terms of the multiple narcotic offender statute. People v. Drayton, 24 A.D. 2d 751 (Appellate Division, First Dept.).
(December, p. 51)

NEW TRIAL

TIMELINESS OF MOTION

Objection held not timely where defendant asserts for the first time in a motion for a new trial that prospective jurors were permitted to observe him in handcuffs. State v. Klinkert, 136 N. W. 2d 399 (Supreme Court of Minnesota).
(October, p. 46)

OBSCENITY

Lenny Bruce in Illinois. People v. Bruce, 202 N.E. 2d 497 (Supreme Court of Illinois).
(January, p. 21)

Section 484-h, regulating sale of pornography to minors held unconstitutional. People v. Kahan, 15 N.Y. 2d 311 (New York Court of Appeals).
(April, p. 20)

PLEA OF GUILTY

AS WAIVER OF ALL PRIOR NON-JURISDICTIONAL DEFECTS

Court reaffirms *Nicholson* "waiver" doctrine (guilty plea waives right to contest voluntariness of confession). People v. Griffin, People v. Dash, 16 N.Y. 2d 508, 16 N.Y. 2d 493 (New York Court of Appeals).
(May, p. 18)

Defendant who pleads guilty waives issue of voluntariness of confession. People v. Buckholz, 207 N.E. 451 (Supreme Court of Illinois).
(July-August, p. 43)

Defendant who enters a plea of guilty "under circumstances indicating that the plea was freely and voluntarily made" may not contend on appeal that plea was result of a conflict of interest among himself and other defendants represented by same attorney. Representation of an indigent defendant by a different lawyer each time he appeared in court does not, standing alone, constitute ineffective assistance of counsel. People v. Camacho, 16 N.Y. 2d 1064 (New York Court of Appeals).
(December, p. 48)

Guilty plea held not a waiver of right to counsel objection. People v. Buckley, 44 Misc. 2d 403 (Erie County Supreme Court).
(January, p. 23)

Defendant who pleads guilty when represented by counsel need not be advised of his right to a trial before a three-judge court. People v. Diaz, 16 N.Y. 2d 625 (New York Court of Appeals).
(June, p. 27)

Statement by attorney at time of sentence indicating that guilty plea was entered largely because of the improbability of successfully attacking the confession does not take the case out of the authority of *People* v. *Nicholson*. People v. DeFlumer, 16 N.Y. 2d 20 (New York Court of Appeals).
(June, p. 22)

JURISDICTION

Defendant indicted for vehicular homicide and intoxicated driving may not plead guilty to assault in the second degree. People v. Maxwell, 23 A.D. 2d 700 (Appellate Division, Second Department).
(April, p. 24)

Trial Court, before accepting plea to lesser crime, must ascertain that the defendant admits each element of crime or "knows what he is doing." People v. Serrano, 15 N.Y. 2d 304 (New York Court of Appeals).
(April, p. 21)

RIGHT TO WITHDRAW

Appellate Division holds refusal of trial court to permit withdrawal of guilty plea an improvident exercise of discretion where (1) defendant claimed he was innocent (2) the motion was made prior to sentence and (3) the state was not prejudiced. People v. Parker, 24 A.D. 2d 610 (Appellate Division, Second Dept.).
(July-August, p. 53)

VOLUNTARINESS

Promise by prosecutor that he would not file multiple felony information if defendant pleaded guilty rendered plea of guilty involuntary. Alden v. Montana, 234 F. Supp. 661 (D.C. Montana).
(January, p. 27)

Where defendant pleaded guilty unaware that a prior court-martial would serve as the basis for his sentencing as a second felony offender, it was an abuse of discretion to deny motion to withdraw plea of guilty made prior to sentence. People v. Jacobs, 23 A.D. 2d 762 (Appellate Division, Second Department).
(May, p. 20)

Where record failed to clearly demonstrate petitioner's awareness of the consequences of his guilty plea the judgment of conviction based upon such plea was set aside. State v. Blaylock, 394 S.W. 2d 364 (Supreme Court of Missouri).
(December, p. 53)

POST CONVICTION REMEDIES

See also right to Counsel and Fair Trial

CLAIM OF NO COUNSEL— BURDEN OF PROOF

Where petitioner alleged that he was not represented by counsel, that he was not advised of his right to counsel, and that he did not waive his right thereto, and where the record was silent and the state did not deny or controvert the allegations, the conviction was set aside without a hearing. State v. Boles, 143 S.E. 2d 467 (Supreme Court of Appeals of West Virginia).
(October, p. 55)

CORAM NOBIS — GROUNDS SUFFICIENCY OF PETITION

Coram nobis relief was granted where defendant's affidavit and his subsequent testimony indicated that he may not have been adequately informed of his constitutional rights. People v. Sardone, 263 N.Y.S. 2d 973 (New York City Criminal Court).
(December, p. 39)

Corroborating affidavit of defendant's attorney not required to obtain hearing on coram nobis application where defendant alleges threats by trial judge made in defendant's presence. People v. Huarneck, 22 A.D. 2d 651 (Appellate Division, First Dept.).
(January, p. 24)

Defendant, induced to refrain from moving to suppress evidence due to officer's false statement that search was made pursuant to search warrant, held entitled to coram nobis relief. People v. Calero, 23 A.D. 2d 698 (Appellate Division, Second Department.
(April, p. 24)

Petitioner's failure to appeal not reviewable in coram nobis proceeding. People v. Webster 47 Misc. 2d 487 (Supreme Court, Ontario County).
(November, p. 45)

Prosecutor's failure to correct witness' perjured testimony grounds for coram nobis relief. People v. Yamin (Supreme Court, Kings County).
(March, p. 25)

FEDERAL HABEAS CORPUS — ADEQUACY OF STATE COURT FINDINGS

State court's failure to articulate legal basis for holding seizure of narcotics valid required *de novo* federal habeas corpus hearing. Cunningham v. Heinze, 351 F. 2d 261 (9th Cir.).
(November, p. 40)

FEDERAL HABEAS CORPUS — EXHAUSTION OF STATE COURT REMEDIES

Federal District Court presented with state prisoner's *Jackson v. Denno* habeas corpus petition declines to rule where it was unclear whether or not issue of voluntariness was raised at the trial within the meaning of *People v. Huntley*. State courts should be given first opportunity to decide whether federal constitutional right was waived by defendant. (See Henry v. Mississippi, 85 S. Ct. 564). U.S. ex rel Schompert v. La Vallee, 238 F Supp. 265 (N.D. N.Y.).
(April, p. 28)

Habeas Corpus relief not available to defendant on bail pending appeal of Federal conviction. Matysek v. United States, 339 F. 2d 389 (9th Cir.).
(January, p. 27)

Twenty-six month delay in deciding state prisoner's coram nobis appeal held not to justify direct application for federal habeas corpus. Williams v. Holman, 239 F. Supp. 173 (M. D. Ala. N. D.).
(May, p. 23)

GROUNDS — INSANITY — FEDERAL HABEAS CORPUS—

Federal habeas corpus available to state prisoner who claims he was incompetent at time of state court proceedings. Federal court should apply federal standard of competency. Noble v. Sigler, 351 F. 2d 673 (8th Cir.).
(December, p. 27)

FEDERAL HABEAS CORPUS — STANDING

Defendant, on bail pending commencement of service of federal sentence, is not "in custody under sentence" and must surrender to the custody of the marshal before he can bring collateral proceeding to vacate conviction pursuant to 28 U.S.C. 2255. Allen v. U.S., 349 F. 2d 362 (1st Cir.).
(September, p. 28)

Federal habeas corpus available to state prisoner to attack a conviction which, though it does not form the basis for his present confinement, has the statutory effect of delaying his eligibility for parole under the sentence which he is serving. Martin v. Peyton, 349 F. 2d 781 (4th Cir.).
(September, p. 24)

FEDERAL MOTION TO VACATE SENTENCE UNDER 28 U.S.C. 2255 —SCOPE OF REVIEW

Defendant who claims that his retained trial counsel failed to appeal because of fraud or deceit is entitled to post-conviction hearing. Camp v. United States, 352 F. 2d 800 (5th Cir.).
(December, p. 31)

Denial of a federal prisoner's application to vacate his conviction pursuant to 28 U.S.C. 2255 does not by itself make that remedy "inadequate or ineffective" so as to allow him to obtain relief by way of habeas corpus. Stirone v. Markley, 345 F. 2d 473 (7th Cir.); Fox v. Taylor, 344 F. 2d 753 (10th Cir.).
(May, p. 24)

STATE HABEAS CORPUS—SCOPE OF REMEDY

Pennsylvania expands scope of state habeas corpus by eliminating prematurity doctrine and allowing habeas corpus to be used to attack convictions on which sentence has not yet begun to run. Commonwealth ex rel. Stevens v. Myers, 213 A. 2d 613 (Supreme Court of Pennsylvania).
(December, p. 48)

Writ of habeas corpus sustained where fact-finding hearing on juvenile delinquency petition adjourned for more than three days over law guardian's objection. People ex rel. Pratt v. Poland, 44 Misc. 2d 769 (Supreme Court, Bronx County).
(March, p. 28)

PRESUMPTIONS

See Inferences and Presumptions

PRE-TRIAL DISCOVERY

Court allows pre-trial discovery of defendant's own statements. People v. Powell.
(June, p. 16)

Court allows pre-trial discovery of state's objective medical reports. State v. Cook, 206 A. 2d 359 (Supreme Court of New Jersey).
(March, p. 26)

Court denies pre-trial inspection of defendant's statements made in the absence of counsel. People v. Torres, 46 Misc. 2d 264 (Supreme Court, Kings County).
(June, p. 24)

Court requires pre-trial disclosure of defendant's statements. People v. Quarles, 44 Misc. 2d 955 (Bronx County Supreme Court).
(January, p. 24)

Defendant in drug prosecution granted permission to have a chemist, hired by him, perform pre-trial chemical analysis of alleged marijuana. People v. Perrell, 47 Misc. 2d 1024 (Nassau County Court).
(December, p. 40)

Defendant not entitled to pre-trial discovery of "all evidence favorable to him in possession of prosecutor" under *Brady* v. *Maryland*; U.S. v. Manhattan Brush Co., Inc., 38 F.R.D. 4 (S. D. N. Y.).
(October, p. 41)

Pre-trial discovery of defendant's own statements granted. People v. Abbatiello, 46 Misc. 2d 148 (Supreme Court, New York County).
(March, p. 26)

Prior statements of prosecution witnesses given to F.B.I. must be made available to defense counsel in related state proceeding where F.B.I. does not claim privilege of non-disclosure. Commonwealth v. Smith, 208 A. 2d 219 (Supreme Court of Pennsylvania).
(May, p. 27)

Refusal of trial court to permit defendant to examine his own pre-trial statement held not reversible error. State v. Corkran, 209 N.E. 2d 437 (Supreme Court of Ohio).
(October, p. 49)

Where defendant charged with murdering his wife had initially been found mentally incompetent to stand trial and claims an inability to remember any of the events surrounding her death, trial court's grant of pre-trial discovery of grand jury testimony and witness' statements in possession of prosecutor not an abuse of discretion. State v. Farmer, 213 A. 2d 249 (Supreme Court of New Jersey).
(December, p. 54)

Where information charged assault "with intent to commit a felony," it was reversible error to deny defendant's pre-trial motion to discover the unnamed felony. State v. Royse, 403 P. 2d 838 (Supreme Court of Washington).
(September, p. 35)

Pre-trial discovery of defendant's statement denied. People v. Bell, New York Law Journal, February 24, 1965 (Supreme Court, Bronx County).
(March, p. 26)

PRISONERS

CIVIL RIGHTS

Prison's refusal to permit Hungarian refugee inmate to receive letters from his only living relative, a sister in Hungary, on ground that they were not in English held an unconstitutional discrimination under the Civil Rights Act, 42 U.S.C. 1983. 237 F. Supp. 852 (E.D. Pa.).
(March, p. 31)

Warden of state prison may not intercept, obstruct or otherwise delay communications from a prisoner to his attorney or to any court, law enforcement agency or executive official of the federal or state government. Matter of Brabson v. Wil-

kins, 45 Misc. 2d 286 (Supreme Court, Wyoming County).
(May, p. 31)

PRIVILEGE AGAINST SELF-INCRIMINATION

See also incriminatory statements and Blood Tests

BLOOD TESTS

Blood tests not within privilege against self-incrimination. State v. Blair, 211 A. 2d 196 (Supreme Court of New Jersey).
(September, p. 42)

Defendant under a Probate Court conservatorship of his person and estate (committee) held capable of consenting to a blood test in connection with an intoxicated driving charge against him. State v. Tarcha, 207 A. 2d 72 (Cir. Ct. of Conn, App. Div.).
(April, p. 34)

Neither right to counsel nor privilege against self-incrimination (constitutional or statutory) were violated where defendant, prior to consenting to drunkometer test, requested counsel and was refused. Notification to defendant's brother eliminated any arguable deprivation of defendant's rights. City of Toledo v. Dietz, 209 N.E. 2d 127 (Supreme Court of Ohio).
(November, p. 51)

COMMENT ON FAILURE TO TESTIFY

California Supreme Court invokes "emergency rule" in holding statements given by defendant in absence of counsel admissible. Court also holds that California comment rule does not violate privilege against self-incrimination. People v. Modesto, 42 Cal. Rptr. 417 (Supreme Court of California).
(April, p. 28)

Fifth Amendment, as applied to the states through the Fourteenth prohibits either comment by prosecutor on the accused's silence or instructions by the Court that such silence is evidence of guilt. Griffin v. California, 380 U.S. 609.
(May, p. 17)

Prosecutor's characterization, in summation, of the defendant as a "witness" (who explained how crime was committed through alleged oral confession testified to by arresting officer) held not an improper comment on the defendant's failure to testify. State v. Shields, 391 S.W. 2d 909 (Supreme Court of Missouri).
(September, p. 40)

Prosecutor's remarks in course of summation, "And when the State concluded its case and all the evidence in this case from the State's standpoint, the defense was free to offer any evidence that they had, and none was forthcoming," held not to constitute a comment on the defendant's failure to testify. Trial court's denial of motion for mistrial affirmed. State v. Thomas, 393 S.W. 2d 533 (Supreme Court of Missouri).
(November, p. 57)

Prosecutor's statement made in summation at federal narcotics trial that "the evidence stands unimpeached and uncontradicted" constituted an improper comment on defendant's failure to take the stand when defendant and his co-defendant were only ones who could contradict the government witnesses; and where defense counsel's prompt objection was overruled, the error was not cured by a charge to the jury that no inference could be drawn from defendant's failure to testify. Desmond v. U.S., 345 F. 2d 225 (1st Cir.).
(June, p. 31)

Prosecutor's statement to jury in federal bail jumping prosecution that defendant "has yet to say where he was — where he has gone . . ." held prejudicial comment on his failure to testify. Carlin v. U.S., 351 F. 2d 618 (5th Cir.).
(March, p. 44)

Trial Judge's comment on defendant's failure to testify requires reversal even though no exception was

taken at the trial. People v. McLucas, 15 N.Y. 2d 167 (New York Court of Appeals).
(March, p. 44)

Trial court's improper comment on defendant's failure to testify held harmless error. People v. Teale, 45 Cal. Rptr. 729 (Supreme Court of California).
(October, p. 53)

GRAND JURY PROCEEDINGS — SCOPE OF IMMUNITY

"Automatic" immunity in State grand jury proceeding held not sufficient compulsion within *Murphy v. Waterfront Commission.* United States v. Interborough Delicatessen Dealers Association Inc. et al., 235 F. Supp. 230 (S.D.N.Y.).
(January, p. 21)

Grant of immunity that compelled defendant to give testimony before a federal grand jury relating to his federal wiretapping conviction while his appeal from that conviction was still pending vitiated the conviction. Frank v. United States, 347 F. 2d 486 (C.A.D.C.).
(May, p. 24)

Immunity granted defendant under Federal immunity statute is not limited to possible violations covered by that statute. In re Giancana, 352 F. 2d 921 (7th Cir.).
(November, p. 44)

Witness granted immunity may not refuse to testify on ground that answers inconsistent with testimony given in earlier related trial may give rise to perjury prosecution. Kronick v. United States, 343 F. 2d 436 (9th Cir.).
(April, p. 27)

JURY CHARGE ON DEFENDANT'S FAILURE TO TESTIFY

Instruction, over defendant's objection, that jury was not to draw any adverse inference against defendant because he declined to testify held not error. Franano v. United States, 243 F. Supp. 709 (W. D. Missouri).
(October, p. 44)

LINE-UPS, ETC.

Movies showing defendant performing coordination tests held inadmissible in drunk driving case where he was not advised that tests were optional and did not know he was being photographed. Spencer v. State, 404 P. 2d 46 (Court of Criminal Appeals of Oklahoma).
(October, p. 58)

Requiring indigent defendants to appear in lineup held not to violate either privilege against self-incrimination or right to equal protection. Rigney et al. v. Hendricks—F. 2d— (3rd Cir.).
(November, p. 44)

SILENCE OF DEFENDANT AS AN ADMISSION

Cross-examination of defendant as to why he remained silent and failed to assert alibi held reversible error. Looking into car not a search. Fagundes v. United States, 340 F. 2d 673 (1st Cir.).
(March, p. 25)

Evidence of defendant's silence after arrest held inadmissible. State v. Phelps, 384 S. W. 2d 616 (Supreme Court of Missouri).
(March, p. 24)

Prisoner's refusal to speak with detective and to deny shooting held inadmissible. State v. Ripa, 212 A. 2d 22 (Supreme Court of New Jersey).
(October, p. 45)

Silence may not be used as an admission unless proper foundation is laid. Commonwealth v. Sindel, 208 A. 2d 894 (Superior Court of Pa.).
(June, p. 34)

STATUTORY REGISTRATION REQUIREMENTS

Fifth Amendment does not bar conviction for either possessing unregistered firearms or transporting them in interstate commerce (26 U.S.C. 5841, 5851) even though defendant could not have complied with registration requirements of National Firearms Act without incrim-

inating himself. Castellano v. U.S., 350 F. 2d 852 (10th Cir.); U.S. v. Forgett, 349 F. 2d 601 (6th Cir.).
(November, p. 44)

WAIVER

Judicial admission of prior conviction given by defendant under compulsion during course of his testimony in felony trial could not be used against him upon subsequent habitual offender proceeding. State v. Grady, 211 A. 2d 674 (Connecticut Supreme Court of Errors).
(September, p. 43)

Where defendant testified in his own behalf and thus waived the privilege against self incrimination, it was not error for trial court to require him to try on a hat which had been found at the scene of the crime. State v. Taylor, 407 P. 2d 59 (Supreme Court of Arizona).
(December, p. 59)

Voluntariness of waiver of immunity executed by municipal employee in connection with state grand jury investigation may not be raised as a defense in contempt proceedings for his subsequent failure to testify. U.S. ex rel. Stevens v. McCloskey, 345 F. 2d 305 (2nd Cir.)
(June, p 31)

PROBATION

CONDITIONS

Condition of probation that defendant refrain from use of alcoholic beverages is "unreasonable as impossible" if defendant's state of chronic alcoholism has destroyed his volitional power to comply. Sweeney v. United States—F. 2d—(7th Cir.).
(November, p. 34)

Court must determine conditions of probation. Improper to place defendant on probation "on such terms as the Probation Officer shall provide for you." People v. Cassidy, 23 A.D. 2d 706 (Appellate Division, Third Department).
(May, p. 21)

PROBATION REVOCATION

QUANTUM OF PROOF

The quantum of proof required to establish a violation of probation is a simple preponderance of the evidence. People v. Cook, 202 N.E. 674 (Appellate Court of Illinois).
(January, p. 32)

RIGHT TO COUNSEL

See Right to Counsel

REMOVAL

Defendant may not remove state grand jury contempt proceeding to Federal Court on ground that answers sought by the state will be used in a pending federal prosecution. In re Kaminetsky, 234 F. Supp. 991 (E.D.N.Y.)
(January, p. 22)

RETROACTIVITY

See Constitutional Rulings — Scope of Application

RIGHT TO COUNSEL

APPEALS

State not required to furnish another appellate counsel where both trial counsel and first assigned appellate counsel conclude that appeal is groundless. Fredericks v. Reincke, 208 A. 2d 756 (Supreme Court of Errors of Connecticut).
(June, p. 32)

Supreme Court of Indiana declines to appoint appellate counsel where trial counsel assigned to prosecute appeal searches record and finds no merit to appeal. Petition of Stillabower, 210 N.E. 2d 665 (Supreme Court of Indiana).
(December, p. 58)

Tenth Circuit Court of Appeals holds that refusal of New Mexico Supreme Court to assign counsel to assist indigent defendant in prosecuting appeal to the United States Supreme Court does not violate his rights under the Equal Protection Clause of the 14th Amendment. Peters v. Cox, 341 F. 2d 575 (10th Cir.).
(March, p. 28)

Where court-assigned appellate counsel advises Court that appeal is without merit and where record discloses no reversible error, appellant was not entitled to other assigned counsel to brief and argue appeal. State v. Mourey, 401 P. 2d 408 (Supreme Court of Arizona).
(June, p. 32)

Defendant held entitled to counsel on post-conviction hearing to determine whether his failure to file notice of appeal within 10 day statutory period could be excused. Carrell v. United States, United States Court of Appeals for the D.C. Circuit, March 18, 1965.
(April, P. 27)

CONFLICT OF INTEREST BETWEEN CO-DEFENDANTS
See Co-defendants

CONTINUANCE
See Continuance

COURT-MARTIALS
Serviceman, represented in special courtmartial proceeding by two assigned officers having neither training nor experience in the law was denied right to counsel. Application of Stapley, 246 F. Supp. 316 (D.C. Utah).
(December, p. 30)

COURT'S DUTY TO ADVISE
Alleghany County Court holds that indigent defendant charged with felony need not be advised of his right to court assigned counsel. People v. Fuller, 256 N. Y. S. 2d 403 (Alleghany County Court).
(April, p. 23)

DURING PERIOD IN WHICH NOTICE OF APPEAL MUST BE FILED
New York Federal Court rejects holding of People v. Kling, as violative of the right to counsel under the Sixth Amendment and rules that a state court defendant has a federal constitutional right to counsel during thirty day appeal period. U. S. ex rel. Mitchell v. Fay, 241 F. Supp. 165 (D.C.N.Y.).
(May, p. 25)

Where defendant's trial counsel indicates that he will file notice of appeal within the 10 day period prescribed by court rules and thereafter fails to do so, the defendant will be relieved of the default and will be permitted to appeal. People v. Krebs, 400 P. 2d 323 (Supreme Court of California).
(May, p. 28)

EFFECTIVE REPRESENTATION
Conviction affirmed where trial court refuses request by court-assigned counsel and by defendant to discharge counsel on grounds of incompetency. Court finds that defendant was ably represented and motion was dilatory tactic. State v. Riley, 394 S.W. 2d 360 (Supreme Court of Missouri).
(December, p. 56)

Defendant is deprived of his right to counsel when his attorney takes inconsistent position on defendant's *pro se* motion to withdraw plea. People v. Wilson, 15 N. Y. 2d 634 (New York Court of Appeals).
(January, p. 32)

Fact that defendant's court assigned counsel in escape prosecution is county prosecutor in neighboring county held not prejudicial *under circumstances of case.* Court however indicates that only workable rule in future would be to presume prejudice. Goodson v. Peyton, 351 F. 2d 905 (4th Cir.).
(December, p. 29)

Where circuit judge appointed "every lawyer of the Harrison County Bar" (with the exception of the prosecutor) to defend indigent defendant in capital case and where chief counsel admitted that he had not prepared a defense, State Court of Appeals reversed circuit court finding that defendant was not deprived of the effective assistance of counsel. Judgment of conviction reversed. Wedding v. Commonwealth, 394 S. W. 2d 105 (Court of Appeals of Kentucky).
(December, p. 57)

Where serious doubt existed as to defendant's sanity, failure of assigned counsel in Ohio capital case to file written plea of not guilty by reason of insanity, which prevented defendant from raising insanity defense at trial, constituted a violation of his right to effective assistance of counsel. Schaber v. Maxwell, 348 F. 2d 664 (6th Cir.).
(September, p. 24)

Defendant who enters a plea of guilty "under circumstances indicating that the plea was freely and voluntarily made" may not contend on appeal that plea was result of a conflict of interest among himself and other defendants represented by same attorney. Representation of an indigent defendant by a different lawyer each time he appeared in Court does not, standing alone, constitute ineffective assistance of counsel. People v. Camacho, 16 N. Y. 2d 1064 (New York Court of Appeals).
(December, p. 48)

Target of Grand Jury investigation who is subpoenaed to testify and who signs waiver of immunity and thereafter testifies falsely may be convicted of perjury. That he was not advised of his right to counsel prior to testifying before Grand Jury held no defense to perjury charge. United States v. Winter, 348 F. 2d 204 (2nd Cir.).
(July-August, p. 40)

LINE UP OR SHOW UP

Testimony as to a hospital "show-up" identification which took place following a magistrate's arraignment at which defendant indicated he was getting his own lawyer held to violate his Sixth Amendment right to counsel and to require reversal of murder conviction. U. S. ex rel. Stovall v. Denno, United States Court of Appeals for the Second Circuit, March 31, 1965.
(April, p. 40)

MISDEMEANORS

Fifth Circuit reaffirms its holding in *Harvey v. State, 340 F. 2d 263 (1965)*, that the right to counsel guarantee of *Gideon v. Wainwright, 372 U.S. 335 (1963)* is applicable to state court defendants charged with misdemeanors. Court gives tacit approval to a rule which would permit denial of counsel in petty offenses as defined in 18 U.S.C.A. 1 and which would require appointment of counsel in all other criminal cases. McDonald v. Moore, 353 F. 2d 106 (5th Cir.).
(December, p. 32)

Indigent defendants charged with misdemeanors in Justice of the Peace Court have right to assigned counsel. Failure of court to clearly and unequivocally inform them of that right vitiates conviction. People v. Witenski (New York Court of Appeals) 4/22/65.
(May, p. 18)

PAROLE REVOCATION PROCEEDINGS

Indigent defendant held not entitled to assigned counsel at "routine" revocation of parole proceeding where the factual basis for revocation is not disputed. Gaskins v. Kennedy, U.S. Court of Appeals for the Fourth Circuit, 8/2/65.
(September, p. 29)

Parolee from mental institution, originally committed following acquittal by reason of insanity, entitled to adversary hearing in proceeding to recommit him. Darnell v. Cameron, 348 F. 2d 64 (C.A.D.C.).
(June, p. 30)

POST CONVICTION REMEDIES

New York Court of Appeals holds indigent defendants are entitled to counsel in coram nobis and habeas corpus appeals to the Appellate Division. People v. Hughes, 15 N. Y. 2d 172 (New York Court of Appeals).
(March, p. 31)

POST CONVICTION REMEDIES

Trial court's failure to assign counsel to indigent petitioner to assist in prosecution of post-conviction remedy does not vitiate conviction. Supreme Court of Colorado

directs trial court to assign counsel. If counsel determines that reversible error was committed on trial, then brief must be filed with Supreme Court of Colorado. Cruz v. People, 405 P. 2d 213 (Supreme Court of Colorado).
(November, p. 51)

PRELIMINARY HEARINGS

California Federal District Court holds state preliminary hearing "critical stage" in proceedings. Harris v. Wilson, 239 F. Supp. 204 (N. D. Cal.).
(May, p. 26)

U.S. Commissioner's failure to advise defendant of his right to counsel at preliminary hearing is prejudicial and requires reversal of conviction. Dancy v. U.S., — F. 2d — (C.A.D.C.).
(November, p. 36)

PROBATION REVOCATION PROCEEDINGS

Indigent defendant does not have the right to assigned counsel on federal probation revocation hearing. Brown v. United States, 351 F. 2d 564 (7th Cir.).
(November, p. 34)

There is no absolute right to counsel at a probation revocation hearing. Trial court's failure to advise the defendant that he was entitled to be represented by counsel was therefore not error. People v. Hamilton, 47 Misc. 2d 1009 (Erie County Court).
(December, p. 58)

RIGHT TO REASONABLE OPPORTUNITY TO OBTAIN COUNSEL OF ONE'S OWN CHOOSING

Coram nobis sustained where trial court forced assigned counsel to trial after defendant had requested reasonable opportunity to retain counsel. People v. Faracey, 46 Misc. 2d 46 (Supreme Court, Kings County).
(April, p. 22)

SENTENCING

Court's failure to afford counsel to an indigent defendant at the time of sentence held to be a violation of his constitutional rights. People v. Sykes, 23 A. D. 2d 701..
(April, p. 23)

TRAFFIC OFFENSES

Westchester County traffic conviction vacated due to failure of court to advise defendant of statutory right to counsel, pursuant to Sec. 699 of the Code of Criminal Procedure. People v. Greene, N. Y. L. J. 3/23/65 (Westchester County Court).
(April, p. 24)

WAIVER

A judgment of conviction will be set aside where indigent defendant who pleaded guilty without the assistance of counsel claims that he was neither advised of his right to state-appointed counsel nor did he waive counsel, and the record is silent as to these issues. Gorham v. Maxwell, 210 N.E. 2d 713 (Supreme Court of Ohio).
(December, p. 58)

Alabama defendant's right to counsel at preliminary arraignment not lost by waiver of counsel at the trial. Williams v. State, 341 F. 2d 777 (5th Cir.).
(March, p. 32)

Defendant's signature to printed waiver of counsel form does not, standing alone, conclusively establish the waiver. Defendant entitled to hearing to determine circumstances under which waiver was obtained. Commonwealth ex rel. Ross v. Botula, 211 A. 2d 42 (Superior Court of Pennsylvania).
(July-August, p. 54)

Defendant who pleads guilty to a felony charge without benefit of counsel but thereafter is represented by competent counsel at the time of sentence who uses plea of guilty in arguing for probation is thereby deemed to have waived right to object to lack of counsel at the plea under the authority of *Henry v. Mississippi, 379 U.S. 443*, State v. Strickland, 135 N.W. 2d 295 (Supreme Court of Wisconsin).
(July-August, p. 47)

Failure of trial court to ascertain from defendant, who waived counsel and pleaded guilty, whether waiver was intelligently made and whether defendant understood the nature of the charge requires setting aside of conviction. Heiden v. United States, 353 F. 2d 53 (9th Cir.).
(December, p. 32)

Supreme Court of Ohio finds waiver of right to counsel where defendant who had been represented by court-assigned counsel in prior prosecution, pleads guilty without counsel in prosecution several years later. Seymour v. Maxwell, 208 N.E. 2d 922 (Supreme Court of Ohio).
(November, p. 52)

Where defendant claimed that prior convictions were obtained in violation of his right to counsel he waived such objection by his plea of guilty, with counsel, to habitual offender information. Waddle v. Commonwealth, 391 S.W. 2d 687 (Kentucky Court of Appeals).
(September, p. 41)

Where minutes of arraignment demonstrate that petitioner was advised of his right to counsel and declined assistance, Court finds waiver. Formal waiver held unnecessary. Petition of Matte, 405 P. 2d 216 (Supreme Court of Montana).
(November, p. 51)

WAIVER—RIGHT TO DEFEND PRO SE

Court suggests appropriate procedure where defendant accused of capital crime indicates desire to conduct his own defense. State v. Davis, 212 A. 2d 19 (Supreme Court of New Jersey).
(October, p. 55)

State court defendant has the right to defend himself without the assistance of counsel. United States ex rel. Maldonado v. Denno, 239 F. Supp. 851 (S.D.N.Y.).
(March, p. 28)

Where defendant deliberately maneuvers himself into a position where he discharges his lawyer and defends himself, and where he has willingly participated in various misrepresentations to the Court, post-conviction relief on the grounds that he has been deprived assistance of counsel is unavailable. Arellanes v. United States, 353 F. 2d 270 (9th Cir.).
(December, p. 30)

SEARCH AND SEIZURE

ABANDONMENT

Defendant did not abandon property which he threw to the ground when confronted by police. People v. Ortiz, N.Y.L.J. 2/17/65 (Supreme Court, Bronx County).
(March, p. 30)

Search of glove compartment of illegally parked vehicle held improper. Finding of abandonment not justified by mere fact that car had been parked in the same spot for two days. People v. James, 46 Misc. 2d 138 (Supreme Court, Kings County).
(May, p. 22)

BLOOD TEST

Blood sample taken at hospital from driver found unconscious at scene of accident and who was neither under arrest nor capable of consent held to constitute unreasonable search and seizure. State v. Towry, 210 A. 2d 455 (Superior Court of Connecticut).
(July-August, p. 55)

CONSENT

Father may consent to search of bedroom of 22 year old defendant. State v. Kinderman, 136 N.W. 2d 577 (Supreme Court of Minnesota).
(November, p. 55)

Landlady's search of tenant's briefcase, left in her apartment for safekeeping, conducted under the direction of F.B.I. agents held not unreasonable. Marshall v. U. S., 352 F. 2d 1013 (9th Cir.).
(December, p. 33)

Wife's consent to search of home not a waiver of husband's Fourth Amendment rights. State v.

Hall, 142 S.E. 2d 177 (Supreme Court of North Carolina).
(July-August, p. 49)

Defendant's mere oral assent held not to constitute consent to search; circumstances must disclose a free, deliberate, and unequivocal decision to permit search. United States v. Cipres et al., 343 F. 2d 95 (9th Cir.).
(April, p. 31)

CUSTOMS SEARCH

Search by customs officer based on mere suspicion, but within the customs area of Kennedy Airport held valid. People v. Luna, N.Y.L.J. 4/9/65 (Supreme Court, Queens County).
(May, p. 22)

EXCEPTIONAL CIRCUMSTANCES

Manipulation of suitcases constitutes a search, though they are never opened. Warrantless search not incident to valid arrest upheld under "exceptional circumstances" doctrine. Hernandez v. United States, 353 F. 2d 624 (9th Cir.).
(December, p. 34).

HARMLESS ERROR
See Appeals

INCIDENTAL NATURE OF SEARCH

Arrest for parole violation justifies search of parolee's apartment. People v. Randazzo, 15 N. Y. 2d 526 (New York Court of Appeals).
(January, p. 33)

Search of apartment upheld as incident to lawful arrest. Murray v. United States, 351 F. 2d 330 (10th Cir.).
(November, p. 38)

Seach of vehicle held incident to lawful arrest. People v. Bryant, N.Y.L.J. 5/28/65 (Supreme Court, Kings County).
(June, p. 25)

Warrantless search of automobile not incident to valid arrest upheld where automobile was seized pursuant to federal forfeiture statute. Landlord's consent to search leased premises held binding on tenant where both are found to be participants in joint enterprise. Drummond and Castaldi v. U. S. 350 F. 2d 983 (8th Cir.)
(November, p. 46)

Warrantless search of defendant's home held not "incident" to his valid street arrest two blocks away. James v. Louisiana, 382 U.S. 36.
(November, p. 43)

INFORMANT—NECESSITY TO DISCLOSE INFORMANT ON MOTION TO SUPPRESS

Disclosure of informant denied. People v. Jackson, 23 A. D. 2d 635 (Appellate Division, First Department).
(March, p. 33)

Disclosure of informant's identity on motion to suppress denied where Police Officer testifies that:

(a) he arrested defendant on the basis of informant's statements that defendant sold narcotics,

(b) the informant had supplied information leading to six or seven narcotic convictions in the past giving the names of those convicted,

(c) information was corroborated in part by the fact that the defendant was in the location where the informant said he would be. People v. McCray, 210 N.E. 2d 161 (Supreme Court of Illinois).
(November, p. 54)

Informant's existence and reliability must be corroborated prior to search. People v. Dong, 47 Misc. 2d 726 (N.Y.C. Criminal Court).
(November, p. 54)

MOTION TO SUPPRESS—PROCEDURE — BURDEN OF PROOF

Answering affidavit by Assistant District Attorney rather than police officer held sufficient on motion to suppress. Trainor v. Jefferson, N.Y. L.J. 5/13/65, (Westchester County Court).
(June, p. 26)

Appellate Division rules that defendant has burden of proof on a

motion to suppress. People v. Walton, 24 A. D. 2d 640 (Appellate Division, Second Dept.).
(July-August, p. 55)

Supporting affidavit unnecessary to obtain hearing on motion to suppress. People v. Allen, Supreme Court, Kings County (N.Y.L.J., March 22, 1965).
(April, p. 25)

Criminal Court determination favorable to defendant on motion to suppress evidence held binding on Supreme Court in related case, via doctrine of collateral estoppel. People v. Cunningham, N.Y.L.J. 3/26/65 (Supreme Court, New York County).
(April, p. 26)

New York Court of Appeals places burden of proof on prosecution in hearing on motion to suppress evidence. People v. Rosario, held applicable to hearing. Confidential informer must be disclosed. People v. Malinsky, 15 N. Y. 2d 86 (New York Court of Appeals).
(January, p. 35)

Trial court's placing of burden of proof on defendant in pre-Malinsky (People v. Malinski, 15 N. Y. 2d 86) hearing on motion to suppress did not require reversal of conviction where defendant's rights were not affected "on the facts of this case." (Section 542, Code of Criminal Procedure). People v. Cotton, 23 A. D. 2d 890 (Appellate Division, Second Department).
(June, p. 25)

NOTICE OF IDENTITY AND PURPOSE PRIOR TO ENTRY

Entering apartment by subterfuge not a "breaking" so as to require notice of purpose and authority. People v. Jewett, et al., N.Y.L.J. 3/30/65 (Supreme Court, Kings County).
(April, p. 25)

Failure of police to announce "purpose" prior to breaking into apartment renders subsequent search illegal. People v. Griffin, 22 A. D. 2d 957 (Appellate Division, Second Department).
(March, p. 34)

Undercover agents' entry into "speakeasy" through open door without announcing identity and purpose does not invalidate subsequent search of customer arrested as "a frequenter of an illegal establishment." Smith v. United States, 353 F. 2d 877 (C.A.D.C.).
(December, p 32)

"PEEPING"—CONSTITUTIONALLY PROTECTED AREAS

Looking through "loose fitting" doors of locked garage held not an illegal search. People v. Swanberg, 22 A. D. 2d 902 (Appellate Division, Second Department).
(March, p. 32)

Peephole observations in public bathrooms not an unreasonable search. Smayda & Gunther v. U.S., 352 F. 2d 251 (9th Cir.).
(November, p. 37)

PROBABLE CAUSE TO ARREST

Arrest and search begin at time of pursuit. Police must have probable cause at that point. Terry v. State, 173 So. 2d 889 (Mississippi Supreme Court).
(June, p. 33)

Evidence that defendant had broken into warehouse with intent to steal over $100 did not justify warrantless arrest; search incident thereto was illegal. Goad v. State, 211 A. 2d 337 (Court of Appeals of Maryland).
(September, p. 42)

Mere presence in house of prostitution not sufficient probable cause to justify search. People v. Spriggs, N.Y.L.J. 5/20/65 (Supreme Court, Kings County).
(June, p. 25)

Search closely connected with but prior to arrest held illegel where neither probable cause nor "exigent circumstances" were present at time of search. Vanella and Sullivan v. United States, — F. 2d — (9th Cir.).
(May, p. 26)

SCOPE OF EXCLUSIONARY RULE

Eighth Circuit interprets *Linkletter v. Walker* as prohibiting retroactive application of *Mapp v. Ohio* exclusionary rule. Haugh v. Craig, 351 F. 2d 595 (8th Cir.).
(November, p. 43)

***Mapp* exclusionary rule held to apply to state forfeiture proceeding against automobile used to transport nontax-paid liquor. One 1958 Plymouth Sedan v. Pennsylvania, 380 U. S. 693.**
(May, p. 16)

Testimony of arresting officer that money which was illegally seized from defendant was contraband held inadmissible in defendant's replevin action. Reyes v. Rosetti, 47 Misc. 2d 517 (Civil Court of N.Y.C.).
(November, p. 57)

SEARCH BY PRIVATE CITIZEN

Evidence illegally obtained by private citizen may be used in civil suit. Sackler v. Sackler, 15 N. Y. 2d 40 (New York Court of Appeals).
(January, p. 34)

Search made by private citizen at direction of police held illegal and evidence ordered suppressed. People v. Fierro, 46 Cal. Rptr. 132 (District Court of Appeal).
(October, p. 58)

SEARCH FOR "MERE EVIDENCE"

Neither Fourth nor Fifth Amendment prohibitions forbid search for "mere evidence". State v. Bisaccia, 213 A. 2d 185 (Supreme Court of New Jersey).
(November, p. 56)

Medical records of osteopath which were seized from his office pursuant to search warrant and which established his guilt held inadmissible under Fourth and Fifth Amendments. People v. Thayer, 44 Cal. Rptr. 817 (District Court of Appeal).
(July-August, p. 55)

SEARCH OR ARREST WARRANT —VALIDITY

Affidavit underlying issuance of search warrant liberally construed. United States v. Ventresca, 380 U.S. 102.
(March, p. 35)

Court of Appeals sustains issuance of search warrant on basis of confidential informant and observations of police. People v. Rogers, 15 N. Y. 2d 422 (New York Court of Appeals).
(June, p. 22)

Court suppresses evidence where property seized is not property described in search warrant. People v. Fisher, N.Y.L.J. 5/20/65 (Westchester County Court).
(June, p. 26)

Defendant may attack the validity of a search made pursuant to warrant by challenging the truthfulness of the factual statements contained in the underlying affidavit. People v. Alfinito, 16 N. Y. 2d 181 (New York Court of Appeals).
(November, p. 53)

Issuance of search warrant sustained where Assistant District Attorney testifies to informant's existence at hearing four months after search. People v. Fernandez, N.Y. L.J. 5/14/65 (Supreme Court, New York County).
(June, p. 26)

Search warrant based on affidavit which fails to set forth dates of surveillance and dates of receipt of information from confidential informant held defective. People v. Azzaro, N.Y.L.J. 4/12/65 (Westchester County Court).
(May, p. 22)

United States Supreme Court strikes down Texas general search warrant, Stanford v. Texas, 379 U.S. 476.
(January, p. 37)

WITHOUT PROBABLE CAUSE TO ARREST

Recently enacted New York "Stop and Frisk" Statute invoked to uphold seizure of burglar's tools. People v. Peters, 44 Misc. 2d 470, (Westchester County Court).
(January, p. 36)

Removal of a revolver from closed briefcase, in defendant's possession, is a "frisk" not a search. People v. Pugach, 15 N.Y. 2d 65 (New York Court of Appeals).
(January, p. 37)

STANDING

Defendant held to have no standing to suppress evidence illegally seized from third person. People v. Cefaro (Supreme Court, Queens County), N.Y.L.J., 4/22/65.
(May, p. 22)

Defendant has no "standing" to suppress evidence seized from the premises of another. People v. De Vivo, 23 A.D. 2d 753 (Appellate Division, First Dept.).
(May, p. 22)

Defendant may suppress evidence illegally seized from another. People v. Estrada, 44 Misc. 2d 452 (Supreme Court, Kings County).
(January, p. 33)

Non-contraband evidence illegally seized from "A" held not suppressible by "B". U.S. v. Granello, 243 F. Supp. 325 (S.D. N.Y.).
(October, p. 43)

Search of vehicle upheld where defendants "consented" while in police custody. Passenger held to have no standing. State v. Littlefield and Sinclair, 213 A. 2d 431 (Supreme Judicial Court of Maine).
(December, p. 58)

Where defendant failed to show legal relationship to searched vehicle, court held that he lacked standing to suppress evidence. People v. Angevine, et al., 262 N.Y.S. 2d 784 (Nassau County Court).
(October, p. 58)

TAINT OF PRIMARY ILLEGALITY

Defendant's admissions, made after being confronted with evidence illegally seized from another, ordered suppressed. People v. Capponi (Supreme Court, Bronx County).
(April, p. 26)

Maryland Court of Appeals holds Wong Sun inapplicable to state court prosecution. Dailey v. State, 212 A. 2d 257 (Court of Appeals of Maryland).
(October, p. 57)

Property seized from defendant's vehicle as a result of information supplied by a third-party who was the victim of an illegal search and seizure ordered suppressed as fruit of poisonous tree. People v. Clinton (Supreme Court, Bronx County, N.Y.L.J., 5/3/65).
(May, p. 21)

Where defendant confesses upon being confronted by illegally seized evidence and trial court finds "statement had been induced by the illegal search," statement must be excluded under authority of *Wong Sun* v. *United States*, 371 U.S. 431. People v. Bilberbach, 401 P. 2d 921 (Supreme Court of California).
(July-August, p. 48)

TRAFFIC VIOLATIONS — SEARCHES INCIDENT THERETO

Arrest for intoxicated driving and driving without license does not justify search of car one-half hour after arrest. People v. Beaman, 253 N.Y. Supp. 2d 674 (N.Y.C. Criminal Court).
(January, p. 33)

Opening of package found on floor of car which had been stopped for "traffic violation" held not a search. Conviction for illegal possession of narcotics affirmed. People v. Davis, 210 N.E. 2d 530 (Supreme Court of Illinois).
(December, p. 58)

Police may not raise hood of car, where defendant stopped for traffic infraction is recognized by officer as person involved in another criminal matter. Stolen motor engine ordered suppressed. People v. Penick and Bailey, N.Y.L.J. 4/19/65 (Supreme Court, Queens County).
(May, p. 22)

VALIDITY OF UNDERLYING ARREST

Acquittal of disorderly conduct does not invalidate incidental search. People v. Lopez, N.Y.L.J. 5/18/65 (Supreme Court, Queens County). *(June, p. 23)*

Acquittal on charge of assaulting an officer does not establish illegality of underlying arrest. People v. Rios, N.Y.L.J. 7/12/65 (Nassau County Court). *(July-August, p. 51)*

Invalid arrest warrant does not vitiate legality of arrest. Where purpose is "investigatory" police interrogation prior to arraignment upheld. U.S. v. Hall, 348 F. 2d 837 (2nd Cir.). *(October, p. 40)*

"Practicability" test for obtaining arrest warrant temporarily rejected by D.C. Circuit. Ford v. U.S., 352 F. 2d 927 (D.C. Cir.). *(October, p. 40)*

SEARCH WARRANTS

See Search and Seizure

SELECTION OF JURIES

See Juries

SENTENCING

Consecutive sentences may be imposed in burglary-rape conviction arising out of same incident. State v. Green, 403 P. 2d 809 (Supreme Court of Arizona). *(September, p. 43)*

Court must order and evaluate psychiatric report prior to imposing one day to life sentence. People v. Smith, 22 A.D. 2d 333 (Apellate Division, Fourth Department). *(March, p. 35)*

Improper to impose more severe sentence on basis of fact not admitted by guilty plea. People v. Ayiotis, 23 A.D. 2d 760 (Appellate Division, Second Department). *(May, p. 22)*

Incorrigible defendant may not be sentenced to indefinite term under Article 7-A of the New York Correction Law. People v. Taylor, 22 A.D. 2d 688 (Appellate Division, Second Department). *(January, p. 38)*

Probation officer's failure to inform sentencing court of defendant's exculpatory statements is not a violation of due process. United States ex rel. Murphy v. Denno, 234 F. Supp. 692 (S.D. N.Y.). *(January, p. 28)*

Revocation of real estate broker's license, mandatory under Section 440(a) of the Real Property Law upon conviction of felony, held not mandatory where Court suspends imposition of sentence. Matter of O'Neill (Supreme Court, New York County) N.Y.L.J., 5/25/65. *(June, p. 27)*

Sentencing Court although having discretion to impose harsher sentence on defendant as first offender than was imposed upon him previously as second offender, must state reasons for record. People v. Krzywosz, 259 N.Y.S. 2d 970 (Appellate Division, Fourth Dept.). *(July-August, p. 55)*

Trial court which sentenced defendant to prison on first count of indictment and imposed suspended sentences on other counts may not thereafter, following reversal of the conviction on count one, impose prison terms on the remaining counts. Pugliese v. United States, 353 F. 2d 514 (1st Cir.). *(December, p. 35)*

SEVERANCES

Application for severance based upon prejudicial effect of co-defendant's confession held premature where District Attorney had not given notice of intention to introduce confession. People v. La Rocca, N.Y.L.J., 5/20/65 (Supreme Court, Queens County). *(June, p. 27)*

Denial of motion for severance held to be reversible error where co-defendant prior to trial had made

statements exculpating the movant and where movant was prevented from calling co-defendant to the stand because of co-defendant's privilege against self-incrimination. United States v. Echeles, 352 F. 2d 892 (7th Cir.).
(October, p. 44)

Refusal to grant severance not error where defendants make substantially similar confessions — Psychiatrist permitted to testify to admissions implicating co-defendant which form basis for expert opinion. State v. Ordog et al., 212 A. 2d 370 (Supreme Court of New Jersey).
(October, p. 60)

Trial Court should not allude to fact that defendant on trial had formerly been charged with other persons and had been granted a severance. However, appellate court will not ordinarily reverse conviction where trial court did not reveal to jury that other defendants pleaded guilty. State v. Tettamble, 394 S.W. 2d 375 (Supreme Court of Missouri).
(December, p. 59)

SEX CRIMES

CORROBORATION

See Evidence

SPEEDY TRIAL

Failure to bring incarcerated defendant to trial until ten months after arrest violates right to speedy trial. State v. Gray, 203 N.E. 2d 319 (Supreme Court of Ohio).
(March, p. 35)

Five month delay between time of arrest and time of prosecution where defendant unable to make bail strongly disapproved. But Court holds defendant is not entitled to discharge after conviction where no showing of prejudice is made. State v. Hartman, 136 N.W. 2d 543 (Supreme Court of Minnesota).
(October, p. 60)

Fourteen year delay in deciding indigent defendant's appeal held not to require dismissal of indictment. People v. Stanley, 15 N.Y. 2d 30 (New York Court of Appeals).

State required to either bring defendant in from out of state Federal Penitentiary at its own expense to stand trial on pending charges or suffer dismissal of the indictment. Commonwealth v. McGrath, 205 N.E. 2d 710 (Supreme Judicial Court of Massachusetts).
(May, p. 27)

STATUTE OF LIMITATIONS

Bar of statute of limitations and denial of right to speedy trial held non-jurisdictional defects which may be waived by plea of guilty. Related criminal charges which were dismissed in consideration of the guilty plea may be taken into consideration at time of sentence. U.S. v. Doyle, 348 F. 2d 715 (2nd Cir.).
(July-August, p. 40)

Defendant's counsel in case (A) had no authority to consent, in defendant's absence and without his consent, to a continuance in case (B). As a result, the four-month statute of limitations for bringing an unbailed defendant to trial was not tolled. People v. Gray, 210 N.E. 2d 486 (Supreme Court of Illinois).
(December, p. 40)

Defense of statute of limitations held jurisdictional. Waiver by defendant held ineffectual. Writ of prohibition sustained. Savage v. Hawkins, 391 S.W. 18 (Supreme Court of Arkansas).
(July-August, p. 50)

In order to invoke nine month extension of federal tax evasion statute of limitations, complaint must show probable cause and pre-indictment proceedings prescribed by the federal rules must be instituted. Jaben v. U.S., 381 U.S. 214.
(June, p. 20)

Ninety day statutory period for filing notice of claim against county for false arrest and imprisonment

computed from date of arrest and imprisonment and not from date of acquittal. Molyneaux v. County of Nassau, 16 N.Y. 2d 663 (New York Court of Appeals).
(September, p. 37)

Statute of Limitations in manslaughter case begins to run upon death, not injury. People v. Rehman, 396 P. 2d 913 (Supreme Court of California).
(January, p. 39)

STATUTES

VAGUENESS

"Hazing" held not unconstitutionally vague. People v. Lenti, 253 N.Y. Supp. 2d 9 (Nassau County Court).
(January, p. 21)

Miami (Fla.) city ordinance making any person who "is found standing, loitering, or strolling about in any place in the city and not being able to give a satisfactory account of himself, or who is without any lawful means of support" guilty of disorderly conduct held unconstitutionally vague. Headley v. Selkowitz, 171 So. 2d 368 (Supreme Court of Florida).
(April, p. 32)

STATUTORY CONSTRUCTION

Action of licensed doctor in preparing narcotic prescriptions on his own forms naming fictitious and deceased persons does not constitute a violation of New York Penal Law, Section 889-b which prohibits the forging of doctor's prescriptions. People v. Klein, 16 N.Y. 2d 263 (New York Court of Appeals).
(December, p. 60)

Court ruling that particular acts proscribed by statute constitute only misdemeanor retroactively applied to nullify earlier felony conviction for same acts. People v. Eastman, 46 Misc. 2d 674 (Monroe County Court).
(July-August, p. 56)

Defendant who employed three Illinois residents at his Indiana gambling establishment found guilty of aiding and abetting interstate travel in aid of racketeering enterprises. United States v. Zizzo, 338 F. 2d 577 (7th Cir.).
(January, p. 29)

Defendant who gives alcoholic beverages to persons under eighteen in defendant's own home and where there is no family relationship is guilty of a misdemeanor (Sec. 484, Subd. 3, N.Y. Penal Law). People v. Arriaga, 45 Misc. 2d 399 (City Court of Syracuse).
(May, p. 19)

Defendants who placed body of stolen automobile on frame of automobile legitimately purchased and then transported combination in interstate commerce held not to have transported a stolen "motor vehicle" in interstate commerce in violation of Dyer Act. United States v. Wooten, 239 F. Supp. 123 (E.D. Tenn).
(May,p. 27)

Florida statute proscribing acceptance of bribe by "any public officer" held to apply to federal narcotic agent. State ex rel. Marshall v. Turner, 175 So. 2d 809 (Third District Court of Appeal of Florida).
(July-August, p. 56)

Alien convicted under California statute of being "under the influence of narcotics" held not subject to deportation under federal statute providing for deportation of any alien convicted for violating "any law or regulation relating to the illicit possession of . . . narcotic drugs." Varga v. Rosenberg, 237 F. Supp. 282 (S.D. Cal.).
(April, p. 29)

"Operating" v e h i c l e receives broader construction than "driving" vehicle. Gallagher v. Commonwealth, 139 S.E. 2d 37 (Supreme Court of Appeals of Virginia).
(January, p. 30)

Person who carnally abuses (Penal Law 483-a) child ten years and three months old is guilty of a felony. Child must have reached eleventh birthday before misde-

meanor section (483-a) is applicable. People ex rel. Makin v Wilkins, 22 A.D. 2d 497 (Appellate Division, Fourth Dept.).
(April, p. 27)

Section 484(3), N.Y. Penal Law, prohibiting the sale or dispensing of alcoholic beverages to children under eighteen years of age held inapplicable to the serving of alcoholic drinks to guests in the home of the defendant. People v. Martell, 16 N.Y. 2d 245 (New York Court of Appeals).
(December, p. 60)

Where local ordinance prohibited disorderly conduct but failed to provide for a penalty, the prosecution was barred. State v. Tessier, 213 A. 2d 699 (Supreme Court of Rhode Island).
(December, p. 60)

SUPPRESSION OF EVIDENCE

Prosecutor's failure to disclose evidence favorable to accused held not prejudicial. State v. Giles, 212 A. 2d 101 (Court of Appeals of Maryland).
(October, p. 60)

Prosecutor's negligent misplacing of evidence so as to deprive defendant of its benefits violates due process. Trimble v. State, 402 P. 2d 162 (Supreme Court of New Mexico).
(July-August, p. 50)

Suppression of evidence by prosecutor required reversal of first degree murder conviction. McMullen v. Maxwell, 209 N.E. 2d 449 (Supreme Court of Ohio).
(October, p. 61)

TRAFFIC VIOLATIONS

See also Search and Seizure

Court upholds speeding conviction based entirely on speedometer reading where speedometer's last test was three and one-half months prior to incident, N.Y.L.J., 3/18/65 (Supreme Court, Suffolk County).
(April, p. 27)

Failure of complaining officer to swear to traffic information before Police Justice vitiates subsequent conviction for speeding. People v. Ragusa, 44 Misc. 2d 940 (Westchester County Court).
(March, p. 36)

Policeman's inspection of "conviction half" of defendant's operator's licence prior to issuing speeding summons requires dismissal of charge. People v. Murdock, 44 Misc. 2d 498 (Special Sessions, Monroe County).
(January, p. 39)

Voluntary delivery of "conviction half" of defendant's operator's license to officer does not constitute basis for dismissal of charge. People v. Lobdell, 261 N.Y.S. 2d 321 (Rensselaer County Court).
(September, p. 44)

VAGUENESS

See Statutes

VEHICLE AND TRAFFIC LAW

See Traffic Violations

WAIVER

See generally, Individual Headings

FAILURE TO OBJECT

Another look at the Fay v. Noia waiver problem. Henry v. Mississippi, 379 U.S. 443.
(January, p. 22)

Where affidavit upon which search warrant issued failed to state the date of a confidential informant's observations, search warrant would nevertheless be sustained on appeal because trial counsel failed to raise that specific objection at hearing on motion to suppress the evidence. State v. DeNegris, 212 A. 2d 894 (Supreme Court of Errors of Connecticut).
(November, p. 57)

WEAPONS

Possession of rifle by person under sixteen years of age violates Sec. 1897, Sub. 4 of New York Penal Law, Matter of "Faber," 45 Misc. 2d 360 (Family Court, Kings County).
(May, p. 22)

Sale of tear gas pen-gun manufactured "for defense from attack or molestation on streets" neither prohibited by New Jersey's omnibus weapons law nor by noxious gas misdemeanor section. State v Seng, 213 A. 2d 515 (Superior Court of New Jersey).
(December, p. 60)

WITNESSES

IMPEACHMENT — SCOPE OF CROSS EXAMINATION

Defendant who admits to prior felony on direct examination by his own attorney is not entitled to reversal of conviction on ground that after trial he discovers that felony conviction did not, in fact, exist. People v. Fields, 44 Cal. Rptr. 842 (California District Court of Appeal).
(July-August, p. 53)

Prosecutor's attempt to impeach defendant's credibility by asking him whether he made certain illegally obtained post-indictment admissions held not to require reversal where trial was non-jury and the admissions were never offered into evidence. U.S. v. Sanchez, 349 F. 2d 354 (2nd Cir.).
(September, p. 31)

Refusal to permit testimony tending to establish bias and hostility of complainant held reversible error. People v. Moore, 23 A.D. 2d 854 (Appellate Division Second Dept.).
(July-August, p. 52)

Trial judge not under obligation to initiate voir dire as to whether prosecutor's non-verbatim notes of witness' pre-trial statement sought by defense counsel under Jencks Act were adopted or approved by the witness where notes themselves contain no suggestion of adoption or approval. U.S. v. Lamma, 349 F. 2d 338 (2nd. Cir.).
(September, p. 30)

Trial court's refusal to allow full disclosure of witness' prior felony convictions was improper but did not require reversal of conviction. People v. Cobb, 202 N.E. 2d 56 (Appellate Court of Illinois).
(January, p. 27)

Trial court's refusal to permit defense counsel to cross-examine government's principal witness in federal income tax evasion case as to whether he "had claimed or would claim an informer's reward" held reversible error. Wheeler v. United States, 351 F. 2d 946 (1st Cir.).
(November, p. 33)

Witness' prior inconsistent statements may be introduced into evidence though witness admits making them. Bentley v. State, 397 P. 2d 976 (Alaska Supreme Court).
(March, p. 28)

RIGHT OF CONFRONTATION

Assertion of privilege against self-incrimination by informer called as a witness by the defense in prosecution for sale of narcotics held proper. Franklin v. State, 212 A. 2d 279 (Court of Appeals of Maryland).
(October, p. 63)

Confrontation clause of the Sixth Amendment held applicable to the states. Pointer v. Texas, 380 U.S. 400.
(May, p. 15).

Introduction of confession of accomplice, implicating defendant in shooting, deprives defendant of right to cross-examine where accomplice asserts privilege against self-incrimination and refuses to testify. Douglas v. Alabama, 380 U.S. 415.
(May, p. 15)